S.B.Civil Misc. Appeal No.178/2006

State of Rajasthan vs. M/s. Bhanwar Lal and Company

Date : 22.5.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. N Mulchandani, Dy.GA, for the appellant.

Mr. Dinesh Mehta, for the respondent.

- - - - -

Though the matter has been listed for orders on stay petition but learned counsel for the parties submit that the appeal itself may be decided in view of the fact that only legal point involved in this appeal is whether the objection petition filed by appellant State under Section 17 of the Arbitration Act, 1940 was within limitation or not ?

The facts of the case reveal that the award was passed on 2.10.2001. The Arbitrator unfortunately expired on 20.10.2001. The application for obtaining the copy of award was submitted by appellant State on 27.11.2001 before the Arbitrator though he died before that. The Arbitrator's son provided photostat copy of the award on 29.11.2001. The appellant submitted objection petition before the civil court on 8.2.2002.

An objection was raised by the respondent that the objection petition filed by appellant State is barred by time as it has not been filed within a period of 30 days

from the date of receipt of copy of award. Said plea prevailed and the objection petition of the appellant was dismissed vide order dated 20.4.2005. Hence, this appeal.

It appears from the facts of the case that the court below has committed error of law in dismissing the objection petition holding it barred by time because of the simple reason that the court below was under impression that the objection petition could have been filed only within 30 days from the receipt of copy of award whereas as per Article 119B, any objection for setting aside the award could have been filed within 30 days from the date of service of notice of filing of the award but admittedly, no such notice was served upon the appellant State till 8.2.2002, therefore, in fact, the objection petition was not barred by time.

In view of the above, this appeal deserves to be allowed, hence, allowed and the order dated 20.4.2005 is set aside and the matter is remanded to the court below for deciding the matter expeditiously.

Both the parties are directed to appear before the Court below on 4.7.2006.

(PRAKASH TATIA), J.

S.Phophaliya